

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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DONALD WALDEN JR., NATHAN
ECHEVERRIA, AARON DICUS, BRENT
EVERIST, TRAVIS ZUFELT, TIMOTHY
RIDENOUR, and DANIEL TRACY on
behalf of themselves and all other similarly
situated,

Plaintiffs,

v.

STATE OF NEVADA, NEVADA
DEPARTMENT OF CORRECTIONS,
and DOES 1-50,

Defendants.

Case No. 3:14-cv-00320-MMD-WGC

ORDER

I. SUMMARY

This dispute involves claims for payment of wages brought by Nevada Department of Corrections' ("NDOC") corrections officers against NDOC. Before the Court is NDOC's Renewed Motion for Judgment on the Pleadings ("Motion"). (ECF No. 86.) The Court has reviewed Plaintiffs' response (ECF No. 87) and NDOC's reply (ECF No. 93). For the reasons discussed below, the Motion is granted in part.

II. RELEVANT BACKGROUND

The following facts are taken from Plaintiffs' Collective and Class Action Complaint ("Complaint"). Plaintiffs are current and former corrections officers employed with NDOC as non-exempt hourly employees. (ECF No. 1 at 8-10.) NDOC has required corrections officers like Plaintiffs and others similarly situated to perform "work activities before and

1 after their regularly scheduled shifts for which they have not been compensated.” (*Id.* at
2 10.) In particular, Plaintiffs allege they were not paid minimum wage or overtime when
3 accounting for these additional hours worked. (*Id.* at 11.) Plaintiffs assert claims for failure
4 to pay minimum wage and overtime in violation of the Fair Labor Standards Act (“FLSA”),
5 failure to pay minimum wages in violation of Article 14 § 16 of the Nevada Constitution
6 and breach of contract. (*Id.* at 16-20.)

7 The Complaint was filed in the First Judicial District Court in and for Carson City.
8 (*Id.* at 7.) NDOC removed based on federal question jurisdiction. (*Id.* at 1-2.)

9 **III. LEGAL STANDARD**

10 A Rule 12(c) motion for judgment on the pleadings utilizes the same standard as
11 a Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be
12 granted in that it may only be granted when it is clear to the court that “no relief could be
13 granted under any set of facts that could be proven consistent with the allegations.”
14 *McGlinchy v. Shull Chem. Co.*, 845 F.2d 802 (9th Cir. 1988) (citations omitted). Dismissal
15 under Rule 12(b)(6) may be based on either the lack of a cognizable legal theory or
16 absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v. Pacifica*
17 *Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

18 A plaintiff’s complaint must allege facts to state a claim for relief that is plausible
19 on its face. See *Ashcroft v. Iqbal*, 556 U.S. 662, 677, (2009). A claim has “facial
20 plausibility” when the party seeking relief “pleads factual content that allows the court to
21 draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*
22 Although the court must accept as true the well-pled facts in a complaint, conclusory
23 allegations of law and unwarranted inferences will not defeat an otherwise proper [Rule
24 12(b)(6)] motion. *Vasquez v. L.A. County*, 487 F.3d 1246, 1249 (9th Cir. 2007); *Sprewell*
25 *v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). “[A] plaintiff’s obligation to
26 provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and
27 conclusions, and a formulaic recitation of the elements of a cause of action will not do.

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1 Factual allegations must be enough to raise a right to relief above the speculative level.”
 2 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations and footnote omitted).

3 In addition, the Ninth Circuit Court of Appeals has recently clarified the pleading
 4 requirements for FLSA claims post *Twombly* and *Iqbal*. See *Landers v. Quality*
 5 *Communications, Inc.*, 771 F.3d 638 (9th Cir. 2015). The court stated that “at a minimum,
 6 a plaintiff asserting a violation of the FLSA overtime provisions must allege that she
 7 worked more than forty hours in a given workweek without being compensated for the
 8 hours worked in excess of the forty during that workweek.” *Id.* at 646. To establish a
 9 plausible claim for relief, a plaintiff may estimate “the length of her average workweek
 10 during the applicable period and the average rate at which she was paid, the amount of
 11 overtime wages she believes she is owed, or any other facts that will permit the court to
 12 find plausibility.” *Id.* at 645.

13 **IV. DISCUSSION**

14 **A. Sufficiency of Factual Allegations Supporting FLSA Claims**

15 NDOC argues that Plaintiffs fail to state their FLSA claims because Plaintiffs have
 16 not alleged that they were paid below the minimum wage for each pay period and that
 17 they worked more than forty hours in any workweek without compensation. (ECF No. 86
 18 at 6-8.) Plaintiffs counter that they were not compensated for performing the pre-shift and
 19 post-shift activities alleged in the Complaint. (ECF No. 87 at 5.) Plaintiffs have missed the
 20 point.

21 The FLSA requires compensation at or above the minimum wage, which is
 22 determined based on the hours worked within the workweek as a whole. *Adair v. City of*
 23 *Kirkland*, 185 F.3d 1055, 1063 (9th Cir. 1999). Employers are also required to pay
 24 overtime for any hours worked in excess of forty hours in a workweek.¹ 29 U.S.C. §
 25 207(a).

26 ¹Plaintiffs appear to acknowledge that the exception established in 29 U.S.C. §
 27 207(k) may apply. (ECF No. 1 at 18 (Plaintiffs seek overtime compensation for “all hours
 28 worked in excess of forty (40) hours [in] a workweek and/or in excess of the hours set
 forth in 29 U.S.C. § 207(k) during the relevant time period . . .”).)

1 Plaintiffs allege they were required to work but were not compensated for working
2 approximately “upwards to 30-minutes of compensable work” before, and after, “their
3 regularly scheduled shifts.” (ECF No. 1 at 11.) They allege entitlement “to compensation
4 at their regular rate of pay or minimum wage, whichever is higher, for all hours actually
5 worked.” (*Id.* at 15.) They also seek overtime compensation for hours worked in excess
6 of 40 hours in a workweek “and/or in excess of the hours set forth in 29 U.S.C. § 207(k).”
7 (*Id.* at 18.)

8 Plaintiffs’ allegations are not sufficient to allow the Court to draw the reasonable
9 inference that NDOC has failed to comply with the FLSA’s minimum wage and overtime
10 requirements as alleged in the first two claims for relief. Plaintiffs fail to allege sufficient
11 facts — such as the length of their workweek, the hours they purportedly worked for any
12 given workweek, their regular rate of pay or average rate of pay, and the amount of
13 overtime wages they believe are owed — to allow the Court to find plausibility. For
14 example, if Plaintiffs worked a 30-hour workweek, then NDOC’s failure to compensate
15 them for an additional hour per workday at the overtime rate would not violate the FLSA
16 because they worked no more than 37 hours, assuming a 7-day workweek.² Similarly, if
17 their hourly rate was significantly above the minimum wage, their hourly rate of pay may
18 still be above the minimum wage when their compensation for the workweek is averaged
19 across their total time worked for the workweek. Absent such additional allegations, the
20 Complaint fails to state a plausible claim for relief for failure to pay the minimum wage
21 and overtime as required under the FLSA.

22 The Court agrees with NDOC that the Complaint fails to state a claim for violations
23 of the FLSA’s overtime and minimum wage requirements in the first two claims for relief.
24 The first two claims will be dismissed. Accordingly, the Court declines to address the
25 remaining arguments raised in the Motion relating to the FLSA claims.

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27 ²Plaintiffs claim in their response that “the employees were all scheduled to work
28 a full 40 hours per week, or 80 hours per two weeks . . .” (ECF No. 87 at 4.) However, this
allegation is not asserted in the Complaint.

1 The Court has discretion to grant leave to amend and should freely do so “when
2 justice so requires.” *Allen v. City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990)
3 (quoting Fed. R. Civ. P. 15(a)). The Court cannot find that amendment would be futile
4 because Plaintiffs may be able to amend their Complaint to cure the deficiencies identified
5 above. The Court will therefore grant leave to amend.

6 **B. State Law Claims**

7 Because the Court dismisses the FLSA claims, albeit with leave to amend, the
8 Court declines to exercise supplemental jurisdiction over the remaining two state law
9 claims pursuant to 28 U.S.C. § 1367(c). The two state law claims for violation of Article
10 14 § 16 of the Nevada Constitution and for breach of contract are dismissed without
11 prejudice.

12 **V. CONCLUSION**

13 The Court notes that the parties made several arguments and cited to several
14 cases not discussed above. The Court has reviewed these arguments and cases and
15 determines that they do not warrant discussion as they do not affect the outcome of the
16 Motion.

17 It is therefore ordered that Defendant’s Renewed Motion for Judgment on the
18 Pleadings (ECF No. 86) is granted as set forth in this Order. Plaintiffs’ first two claims for
19 relief are dismissed without prejudice. Plaintiffs will be given thirty (30) days to amend
20 their complaint to cure the deficiencies identified in this Order. Failure to file an amended
21 complaint will result in dismissal of these two claims with prejudice. The Court declines to
22 exercise supplemental jurisdiction over the two state law claims and therefore dismisses
23 them without prejudice.

24 DATED THIS 20th day of March 2017.

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27 MIRANDA M. DU
28 UNITED STATES DISTRICT JUDGE